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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/849,255	05/20/2004	Rene Scotto D'Aniello	004752-0006	7399

7590 10/21/2004

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EXAMINER

ABBOTT, YVONNE RENEE

ART UNIT PAPER NUMBER

3644

DATE MAILED: 10/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/849,255

Applicant(s)

D'ANIELO, RENE SCOTTO

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Canada on 11/6/03. It is noted, however, that applicant has not filed a certified copy of the 2448830 application as required by 35 U.S.C. 119(b).

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

3. The abstract of the disclosure is objected to because in line 1 the phrase "disclosed is" should be omitted. Correction is required. See MPEP § 608.01(b).

Claim Objections

4. Claim 18 is objected to because of the following informalities: in claim 18, "moulded" is misspelled and should be changed to --molded--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The "detachable band made of gluing material" of claim 5 and the specification (p. 4, lines 26-27) is not described in a way to enable one to make or used the invention in that it is not understood what is meant by "gluing material", nor is it understood how the band is made or how it operates as an attaching means.

7. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In the preamble of claims 1-18, Applicant recites a "litter" material, but then proceeds to describe a litter receptacle in the body of the claim, thereby making it unclear as to what exactly is the claimed invention. Litter is defined and recognized in the art primarily as an absorbent particulate material used for animal bedding or used to collect pet waste. Claim 12 is considered to be indefinite in that it refers to the invention "when it is sold" and claimed subject matter can only

be referred to at one point in time. In claim 7, it is not understood what is meant by "proper position".

8.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 6, 7, 11, 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Gumpesberger (5,325,815). Gumpesberger discloses a sifting device for animal litter comprising at least three pans (20a,20b,20c,20d) made of molded plastic (col. 6, lines 55-56) insertable into each other to form a stack, the pans being interchangeable within the stack, each pan comprising a floor and a peripheral wall (24) forming together an open container capable of receiving a layer of an absorbing material for absorbing and solidifying organic wastes, and a plurality of openings (26) made within the floor of each pan, the openings of each pan being located at positions different from the openings of the other pans in such a manner that the openings of each pair of adjacent pans be vertically out of line, each opening being sized to retain the organic wastes while allowing the absorbing material to pass therethrough; wherein the peripheral wall of each container comprises an upper rim or edge opposite to the floor; wherein each pan comprises a handle (32) projecting outwardly from portion of the peripheral wall.

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Gumpesberger further discloses with respect to claim 7 that the user would know that a stack of the trays are aligned (i.e. the slots (26) are all vertically aligned) if the handles are all vertically aligned; however to work properly, each tray is oriented such that the handles are not vertically aligned. (col. 5, lines 21-30); in effect, the phrase "proper position" of claim 7 is considered relative and depends on what's proper (i.e. whether or not one wants to allow passage of material from one tray to the next). It should be noted that even if one construes "proper position" to mean that the holes are not aligned, the disclosure of Gumpesberger would nevertheless warrant a finding of obviousness as the basis of rejection.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3, 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gumpesberger in view of Walker (5,782,374). Although Gumpesberger shows nestable litter trays having rims, it is not disclosed that the rims are held together by gripping attachment means. Walker teaches nestable containers wherein the rims of the containers are attached by grippers or clips (64). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the

containers or trays of Gumpesberger be attached by clips as taught by Walker that the clips help to retain or hold the liner or tray in the nested position.

13. Claims 3, 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gumpesberger in view of Harrington (4,312,295). Although Gumpesberger shows nestable litter trays having rims, it is not disclosed that the rims are held together by gripping attachment means. Harrington teaches a litter screening device comprising a liner nested within a tray wherein a clip (28) attaches and holds the liner over the rim of the tray. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the containers or trays of Gumpesberger be attached by clips as taught by Harrington that the clips help to retain or hold the liner or tray in the nested position.

14. Claims 3, 4 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gumpesberger in view of Murphy (5,701,844). Although Gumpesberger shows nestable litter trays having rims, it is not disclosed that the rims are held together by gripping attachment means. Murphy teaches nestable containers wherein the rims of the containers are attached by hook and loop grippers (351,354,364,364). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide that the containers or trays of Gumpesberger be attached by clips as taught by Murphy that the grippers help to retain or hold the liner or tray in the nested position.

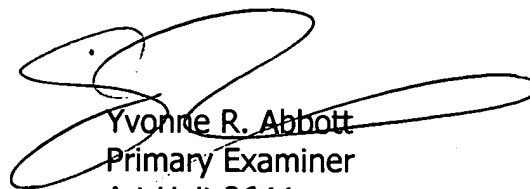
Allowable Subject Matter

15. Claims 8-10 and 14-18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (703)308-2866. The examiner can normally be reached on Mon-Thurs 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on (703)305-7421. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Yvonne R. Abbott
Primary Examiner
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